of Florida; and against W. V. Knott, as Treasurer of the State of Florida, whose official place of business is in the State Capitol in the City of Tallahassee in the County of Leon, State of Florida, the said W. V. Knott, being a citizen and resident of Tallahassee in the County of Leon, State of Florida;

(c) And against W. V. Knott, Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, whose official place of business is in the State Capitol in the City of Tallahassee, in the County of Leon, State of Florida;

(d) And against Taylor County, a political subdivision of the State of Florida;

(e) And against the said W. V. Knott, Treasurer of the State of Florida, Dave Sholtz, Governor of the State of [fol. 5] Florida, and J. M. Lee, Comptroller of the State of Florida, as Members of and constituting the Board of Administration of the State of Florida.

III

The plaintiff alleges that the said defendant, J. M. Lee, as Comptroller of the State of Florida, Dave Sholtz, as Governor of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida, are each of them more than twenty-one years of age.

IV

That the jurisdiction of this Court, both Federal and equity jurisdiction, over the parties and subject-matter of this suit and the grounds upon which said jurisdiction depends are as set out and shown in all of the paragraphs of this Bill of Complaint; that said grounds are also herein condensed and are alleged to be herein as follows:

(a) That Iron Ross, a citizen and resident of Florida, was appointed by Order of the Comptroller of the Currency of the United States, as Receiver of the First National Bank of Perry, a National Banking Corporation, existing under the Act of Congress of the United States, commonly known as the National Bank Act, the said National Bank of Perry being domiciled at Perry, Taylor County, Florida.

(b) That the names and addresses of the defendants are so far as the same are known to plaintiff as hereinbefore set forth.

(c) That equity jurisdiction of this cause is conferred by law governing the jurisdiction in chancery, this suit [fol. 6] being brought and prosecuted as aforesaid by plaintiff as Receiver of the First National Bank of Perry aforesaid in pursuance of the order and direction of the Comptroller of the Currency of the United States as aforesaid for the purpose of recovering the possession of the assets of an insolvent National Banking Corporation and is one for winding up the affairs of said National Bank, and the jurisdiction of this Court is vested under and by the terms of the provisions of Title 28 U. S. C. A. 41 (16).

(d) The matter in controversy in this suit exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00) and arises under the laws of the United States, and is brought and prosecuted by plaintiff, as an officer of the United States, in pursuance of his duties as such officer and his right and power to prosecute said suit is derived from the laws of the United States, and therefore the jurisdiction of this Court is vested under the terms and provisions of Title 28, Section 41 (1) U. S. C. A.

V

Plaintiff alleges and shows unto the Court:

(a) That the First National Bank of Perry is a National Banking Association existing under the Act of Congress, commonly known as the "National Bank Act"; that said National Bank was lawfully authorized to begin business on or about the 25th day of April, 1905, and that said Bank in pursuance of such authorization did engage in the business which it was authorized to pursue under the terms of said "National Bank Act" from said date until the day it was found to be insolvent by its Board of Directors as aforesaid and closed for liquidation in accordance with the terms of said "National Bank Act" on to-wit: the 18th day of October, 1930.

[fol. 7] (b) The plaintiff further alleges that on March 12, 1930, W. L. Weaver, as Executive Vice-President of the First National Bank of Perry, undertook to pledge with

W. V. Knott, Treasurer of the State of Florida, as County Treasurer Ex-Officio of Taylor County, Florida, $10,000.00 of the face value of the County of Sarasota 5½% Highway Bonds to be held as security for any funds deposited by the Treasurer of Florida in the First National Bank of Perry, marked Exhibit "1," and made part hereof; that while this attempted pledge was broad enough to cover any funds deposited by the State Treasurer in the said First National Bank of Perry, the real purpose of the said attempted pledge was to secure funds deposited in said Bank by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County; the bonds in this paragraph described were delivered to the State Treasurer in pursuance of the said pledge and the said bonds or the trust receipt from the Federal Reserve Bank evidencing the ownership thereof have been continuously held in the possession of the said State Treasurer since the time of delivery of the said bonds to him.

(c) The plaintiff further alleges that on March 15, 1930 W. L. Weaver, as Executive Vice-President of the First National Bank of Perry, undertook to pledge with W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, Town of Perry bonds of the face value of $10,000.00 to secure any funds deposited by the Treasurer of Florida in the First National Bank of Perry, a copy of said pledge agreement being hereto annexed, marked Exhibit "2," and made part hereof; that while the pledge in this paragraph described was broad enough to cover any funds deposited by the State Treasurer, the real purpose of the said pledge was to secure the funds of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor [fol. 8] County; the said bonds described in this paragraph were delivered to the State Treasurer in pursuance of the pledge and the said bonds or the trust receipt from the Federal Reserve Bank evidencing the ownership thereof have been continuously held in the possession of the State Treasurer since the time of their delivery to him.

(d) The plaintiff further alleges that from time to time in 1929 and in the early part of 1930, W. L. Weaver, as Executive Vice-President of the First National Bank of Perry, pledged with the Bond Trustees of Taylor County certain securities consisting of mortgages, notes and bonds to secure funds deposited by the Bond Trustees of Taylor

County in the First National Bank of Perry; that these securities so pledged with the Bond Trustees were never delivered to the said Bond Trustees but all of said securities so pledged with the Bond Trustees were held in the physical possession of the First National Bank of Perry from the time that said pledge was made until after the Plaintiff was appointed as Receiver as hereinafter set forth.

Plaintiff further avers that on May 2, 1930 the face value of these securities pledged with the Bond Trustees of Taylor County and held in the physical possession of the First National Bank of Perry aggregated $69,549.76, and that on May 2, 1930, the Bond Trustees of Taylor County attempted to assign the contracts for the said pledges, together with the collateral so pledged to W. V. Knott, Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, a copy of said assignments being hereto annexed marked Exhibit "3" and made part hereof; that all of the securities that were sought to be assigned to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County under date of May 2, 1930, continued to remain in the physical possession of the First National Bank of Perry until after the plaintiff's appointment as Receiver of said Bank.

[fol. 9] (e) Plaintiff further avers that upon plaintiff's appointment as Receiver under date of the 25th day of October, 1930, plaintiff delivered to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the pledged bonds aggregating the face value of $20,250.00, found in the possession of the Bank which has been attempted to be assigned to the State Treasurer, as Ex-Officio County Treasurer of Taylor County, by the Bond Trustees of Taylor County as hereinbefore set forth, but the Plaintiff Receiver retained the other pledged collateral found in the possession of the Bank upon the appointment of the Receiver consisting of notes and mortgages which the Bond Trustees of Taylor County had undertaken to assign to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and the plaintiff still holds in his possession that portion of the said pledged notes and mortgages that have not been paid.

(f) Plaintiff further alleges that prior to June 25, 1930 National Banks were not authorized to secure deposits of public funds; that on June 25, 1930 there became operative

an Amendment to the National Bank Act under the provisions of which National Banks were authorized subsequent to the operative date of said Amendment to secure public deposits when empowered to do so by State laws, but the plaintiff would show that an agreement made by any National Bank prior to June 25, 1930 to secure deposits of public funds was ultra vires, illegal and void for the reasons hereinafter particularly set forth.

(g) Plaintiff Receiver would further show that since the said Bank closed on October 18, 1930 the Plaintiff Receiver of said Bank has in liquidation of said Bank and in the distribution of said assets paid to *W. V. Knott*, State Treasurer, as Ex-Officio County Treasurer of Taylor County, as a general creditor or a depositor in said Bank dividends in the sum of $13,318.03, being a dividend of [fol. 10] 19% that was paid to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer, as a general creditor of the Bank along with other general creditors.

(h) Plaintiff Receiver would further show that since the said Bank closed on October 18, 1930 the Plaintiff Receiver has collected $20,759.31 from the said pledged collateral that came into the possession of the plaintiff upon the plaintiff's appointment as Receiver and that the Plaintiff Receiver has paid over to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the said proceeds derived from the collection of the said pledged collateral, in the sum of $20,759.31.

(i) Plaintiff Receiver would further show that the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, has since the appointment of the Plaintiff Receiver, collected the sum of $2,025.00 in interest on the portion of the said pledged collateral held by him under the said attempted pledged agreements and has undertaken to apply said sum in part payment of his claim as a depositor and creditor of said Bank.

(j) Plaintiff would further show that W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, or W. V. Knott, as Treasurer of the State of Florida, J. M. Lee, as Comptroller of the State of Florida, and Dave Sholtz, as Governor of the State of Florida, have since the appointment of the Plaintiff Receiver sold for the sum of $1,042.50, one of the bonds so undertaken to be

pledged with W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, as hereinbefore described and have undertaken to apply said sum in part payment of the claim of W. V. Knott, State Treasurer, as Ex-[fol. 11] Officio County Treasurer of Taylor County, as a depositor and creditor of said Bank.

(k) The plaintiff would further show that attached hereto as Exhibit "3½" is a list or schedule of securities now held by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, under said attempted pledges.

(l) Plaintiff would further show that on the 18th day of October, 1930 the said First National Bank of Perry, being insolvent, suspended operations and has not since transacted banking business; that upon the closing of the said Bank, the Comptroller of the Currency of the United States of America took charge of said Bank on or about the 25th day of October, 1930, and on or about the 25th day of October, 1930 the said Comptroller of the Currency of the United States appointed the plaintiff herein as Receiver of said Bank, a copy of said Order appointing said plaintiff as Receiver is hereto annexed, marked Exhibit "4" and made part hereof; that said plaintiff thereupon took charge of the affairs of the Bank and is now the qualified and acting Receiver thereof; that this suit is brought under the laws of the United States by said plaintiff in winding up the affairs of the said Bank, the said plaintiff acting under the direction of the said Comptroller of the Currency of the United States for the purpose of winding up the affairs of the said Bank.

(m) The plaintiff further avers that the plaintiff herein, as Receiver of said National Bank as aforesaid, is by operation of law Trustee for the creditors of the said National Bank and especially the depositors thereof, which said creditors and especially the said depositors, unless relief is granted by this Court will become the innocent victims of the unlawful contracts hereinbefore alleged to have been entered into between the said officers of said National Bank [fol. 12] and the said defendant, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and the unlawful contracts hereinbefore alleged to have been entered into between the officers of said Bank and the Board of Bond Trustees of Taylor County that were thereafter assigned to W. V. Knott, State Treasurer, as Ex-Officio

County Treasurer of Taylor County; plaintiff in this connection, alleges that said National Bank on the said 18th day of October, 1930, when the said Bank ceased operations had other private or common depositors than said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, of approximately 1,020 in number whose claims against said National Bank aggregated in excess of $336,000.00; that said Bank owed other debts and liabilities of approximately $336,263.22, making total liabilities of $336,263.22; the assets in the hands of the plaintiff are totally insufficient to pay the claims of said creditors and the said W. V. Knott, as State Treasurer of the State of Florida, Dave Sholtz, as Governor of the State of Florida, and J. M. Lee, as Comptroller of the State of Florida, are now asserting the right and privilege under the provisions of Chapter 14653, Laws of Florida, Acts of 1931, of foreclosing the said pledges and selling the securities in order to satisfy the indebtedness due W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, by reason and because of the illegal pledges hereinbefore described.

(n) The plaintiff further alleges that the said effort on the part of the officers of said National Bank to make and enter into said agreement to pledge and hypothecate the said securities was void and illegal for the following reasons:

First. That the officers of said National Bank as aforesaid were without lawful power and authority to execute said agreements for the reason that no order or action was [fol. 13] taken thereon by the Board of Directors of said National Bank, the only body authorized by law to direct or empower said officers of said National Bank to pledge and hypothecate its property to secure the payment of any debt or any obligations whatsoever.

Second. The National Bank had no power under the laws of the United States to enter into the said agreement or to make the said pledge.

Third. The said agreements and the said pledges in pursuance thereof were void and ultra vires and contrary to the public policy of the United States.

Fourth. Said agreements and said pledges in pursuance thereof created an unlawful preference in favor of said defendant, W. V. Knott, State Treasurer, of the State of

Florida, as Ex-Officio County Treasurer of Taylor County, as against other creditors of the said National Bank, and such preference is likewise void and unenforcible under the laws of the United States.

Fifth. The efforts upon the part of the said officers of said National Bank and upon the part of the said defendant, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, to give on the one hand and to receive on the other security for the repayment of the said deposits constitutes and is a fraud upon the other creditors of the said National Bank.

Sixth. The rights of all creditors of insolvent National Banks become fixed as of the date of closing. The Act of Congress of the United States of America, approved June 25, 1930, and the Statutes of the State of Florida, could not validate a pledge which was unlawful at the time the pledges [fol. 14] were made; since the First National Bank of Perry was without power to make the pledges in question, the Plaintiff Receiver is entitled to recover said securities and/or the proceeds derived therefrom unconditionally in order that they may be administered for the benefit of the general creditors of the Bank.

Seventh. That it was illegal and ultra vires for the First National Bank of Perry to guarantee the deposits of a general creditor or a depositor of said Bank; that when the said funds were deposited in the First National Bank of Perry, said funds became intermingled with other funds of the said First National Bank of Perry and became the property of the said Bank, and the depositors became the general creditors of said Bank without security.

VII

The plaintiff would further show that the action of the plaintiff in delivering to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the pledged collateral as hereinbefore described, the action of the plaintiff in paying over to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the $20,759.31, being proceeds derived by plaintiff from the collection of pledged collateral as hereinbefore described, the action of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, in collecting interest from the

pledged collateral in the sum of $2,025.00 and applying the same *in part payment* of his claim against the said Bank as hereinbefore described, and the action of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, or the action of W. V. Knott, State Treasurer, J. M. Lee, State Comptroller, and Dave Sholtz, as Governor of the State of Florida, in selling one of the bonds held as col-
[fol. 15] lateral as aforesaid for the sum of $1,042.50 and applying the moneys so derived *in part* payment of the claim against the Bank as hereinbefore described were all illegal, ultra vires and void for the following reasons:

(a) That the said actions operated to prefer the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, a general creditor, over other general creditors.

(b) That said actions prevented a ratable distribution of assets between all creditors as required by law.

(c) That said actions were based upon a misapprehension or mistake of the applicable law.

(d) That said payments are preferential payments that were made under a mistake of the applicable law.

(e) That said delivery of said securities by plaintiff to defendant, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, as hereinbefore described resulted from a mistake by plaintiff, an officer of the United States, of the applicable law.

(f) That the payment by plaintiff to defendant, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, of the $20,759.31 derived from the collections from pledged collateral resulted from a mistake by the plaintiff, an officer of the United States, of the applicable law.

(g) That the actions of the plaintiff in paying to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the proceeds from pledged collateral and the delivery to him of pledged collateral was based upon a misapprehension or mistake of the plaintiff, an officer of the United States, as to the legality of the pledges hereinbefore described.

[fol. 16] (h) That said actions were unauthorized; illegal and ultra vires.

(i) That all of said sums paid to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, should have been distributed ratably among the general creditors.

(j) That said securities so delivered to the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, should have been sold and the proceeds distributed ratably among the creditors of said Bank.

(k) The rights of all creditors and stockholders of insolvent National Banks become fixed as of the date of closing. Neither the Receiver of a National Bank, nor the officers of the State of Florida, or of the County of Taylor have any power to bind the creditors or stockholders by a new contract made subsequent to the date of closing of the Bank, or by altering or amending any contract made prior to the closing of the Bank or by ratifying or approving any illegal contract made prior to the closing of the Bank.

(l) That the said actions of the Receiver and said Officials of the State of Florida and the County of Taylor herein sought to be set aside would, if sustained, have the force and effect of validating or ratifying illegal contracts made prior to the date of the closing of the Bank.

(m) That neither the Receiver nor the officials of the State of Florida, or County of Taylor have any power to bind stockholders and creditors by recognizing any illegal contract made prior to the date of the closing of the Bank.

[fol. 17] VIII

Plaintiff further avers that W. V. Knott, as State Treasurer of the State of Florida, J. M. Lee, as State Comptroller of the State of Florida, and Dave Sholtz, as Governor of the State of Florida, are now threatening to proceed under the provisions of Chapter 14653, Laws of Florida, Acts of 1931, to sell the collateral now in the hands of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, under said illegal pledges and apply the proceeds in payment of the claim of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and if said officers are permitted to proceed with the sale and sell the said securities, the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of

Taylor County, will have obtained a further and additional illegal preference over the other creditors of the said Bank to the irreparable damage of the plaintiff and the general creditors of the Bank.

IX

Plaintiff would further show that the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, has been acting in the illegal transactions hereinbefore described as an officer and agent of the defendant, Taylor County, for and on behalf of defendant, Taylor County; that the defendant, Taylor County, a political subdivision of the State of Florida, has been the recipient and beneficiary of the illegal transactions hereinbefore described and has received the benefit of moneys described and set forth in said illegal transactions.

X

The plaintiff would further show that the plaintiff is informed and believes, and charges upon information and [fol. 18] belief that the said sums of money hereinbefore described as having been illegally received by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, have been paid out to the bondholders of Taylor County by the said Board of Administration.

XI

The plaintiff would further show that the plaintiff is entitled to an injunction to jointly and severally enjoin and restrain the said defendants, W. V. Knott, as Treasurer of the State of Florida, Dave Sholtz, as Governor of the State of Florida, and J. M. Lee, as Comptroller of the State of Florida, and/or as Members of the Board of Administration of the State of Florida, from selling said pledged securities now in the possession of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and that plaintiff is likewise entitled to an injunction to enjoin and restrain W. V. Knott State Treasurer, as Ex-Officio County Treasurer, and/or the Board of Administration of the State of Florida, from asserting any claim to the pledged collateral now in the possession of plaintiff, and the plaintiff is likewise entitled to an injunction restraining the said Members of the Board of Administration from paying out any further or addi-

tional sums to the holders of the bonds of Taylor County for and on behalf of Taylor County pending this suit and/or until the sums illegally received by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, have been paid to plaintiff.

XII

The plaintiff would further show that the said Board of Administration is organized and existing under the provisions of Chapter 14486, Laws of Florida, Acts of 1929, and other Acts amendatory thereto.

[fol. 19]

XIII

Plaintiff would further show that in order that the said dispute may be settled according to law, said comptroller of the Currency of the United States has directed the plaintiff to institute this suit in order that a judicial determination may be had between the parties hereto and that a correct disposition may be made of the dispute between the parties.

Wherefore, the premises above considered, the plaintiff being without remedy, save in a Court of Equity, plaintiff prays that the defendant, W. V. Knott, as Treasurer of the State of Florida, Dave Sholtz, as Governor of the State of Florida, and J. M. Lee, as Comptroller of the State of Florida, may be jointly and severally temporarily enjoined, as Members of the State Board of Administration, or otherwise, pending the final determination of this cause, from selling under the provisions of Chapter 14653, Laws of Florida, or otherwise, any of the said securities; that the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, may be temporarily enjoined, pending the final determination of this suit, from delivering any of the said securities now in his possession or control, to the defendant, Taylor County; that pending this suit, the defendant, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and/or the said Members of the said Board of Administration may be enjoined from asserting any right to the possession of the pledged collateral now in the hands of the plaintiff, and from paying out any moneys to the holders of the bonds of Taylor County, pending this suit; that upon final

hearing, the said injunctions herein sought may be permanent and perpetual; that upon final hearing, it may be decreed that the agreements under which the said collateral was pledged and the assignment thereof may be declared null and void; that the defendant, W. V. Knott, State [fol. 20] Treasurer, as Ex-Officio County Treasurer of Taylor County, may be required to surrender to plaintiff that part of the pledged collateral now in his possession in order that the same may be sold and that the proceeds of sale may be distributed ratably among the general creditors of said Bank, that the action of plaintiff in delivering to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, a part of said pledged collateral be declared to be illegal; that the action of the plaintiff in paying over to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the sum of $20,759.31 derived from the collections made by plaintiff from pledged collateral be declared illegal; that the action of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, in collecting interest on pledged collateral in the sum of $2,025.00 and applying the same in part payment of his claim against the Bank be declared to be illegal; that the action of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and/or the action of the said W. V. Knott, as State Treasurer, J. M. Lee, as State Comptroller, and Dave Sholtz, as Governor of the State of Florida, in selling one of the said bonds held under the illegal pledge for the sum of $1,042.50 and applying the proceeds in part payment of said claim against the Bank be declared illegal; that the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and the said Board of Administration of the State of Florida may be required to pay over to plaintiff $23,826.81 that may be hereafter received by the Board of Administration for and on behalf of the holders of the bonds of Taylor County for the Purpose of compensating plaintiff for the moneys of the plaintiff that were illegally received by the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and paid out by the Board of Administration as [fol. 21] hereinbefore set forth in the sum of $23,826.81; or that this plaintiff may be subrogated to the rights of the holders of the bonds of Taylor County to future payments by the Board of Administration to such bondholders

in an amount sufficient to compensate this plaintiff for moneys illegally received by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and paid out to bondholders of Taylor County by the Board of Administration to compensate this plaintiff for moneys illegally received and disbursed as hereinbefore set forth in the sum of $23,826.81; or that the plaintiff may have and recover a final judgment and decree for $23,826.81 of and from Taylor County for whose use and benefit said moneys were illegally received and disbursed; that the plaintiff may be authorized to offset against any future dividends that may be payable in the administration of said trust to said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, said sums so illegally received by the said defendant, W. V. Knott, in his official capacity; that the plaintiff may be allowed lawful interest upon any sums which he may recover; and, if plaintiff has prayed for improper relief, he prays for such other, further and general relief as equity may deem fit and proper.

That your Honor may grant unto the plaintiff the State's most gracious writ of subpoena directed to the defendants specified in this Bill of Complaint; that each and every of said defendants may be required in and by said subpoena, or other process, to appear before this Court on a day to be fixed by this Court and to answer this Bill of Complaint, but not under oath, answer under oath being hereby expressly waived, and plaintiff may have such other relief as to your Honor may seem meet and equity may require; and that in all cases where no answer has been filed on or before the time for filing same as required by the practice, [fol. 22] or if answer is filed and this cause shall be decided for plaintiff, that then this Honorable Court may by its decree grant the relief herein prayed or such other relief as to your Honor may seem meet and equity may require.

Iron Ross, As Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws. J. Turner Butler, Attorney for Plaintiff.

Duly sworn to by Iron Ross. Jurat omitted in printing.

[fol. 23]

EXHIBIT "1" TO BILL OF COMPLAINT

State of Florida, Office of State Treasurer, Tallahassee

March 12, 1930.

Received of First National Bank, Perry, Florida, the following bonds, the same to be held as security for any funds deposited by the Treasurer of Florida in the said First National Bank, Perry, Florida, to-wit:

Description of Securities	Trust Receipt No.	Int. Payable	Date of Issue	Amount
County of Sarasota 5½% Highway Bonds dated February 1, 1925, due February 1, 1945, with August 1, 1930 and SCA.....	Jax 1958	F&A		10,000.00

(Sgd.) W. V. Knott, State Treasurer and as County Treasurer Ex-Officio.

[fol. 24]

EXHIBIT "2" TO BILL OF COMPLAINT

State of Florida, Office of State Treasurer, Tallahassee

March 15, 1930.

Received of First National Bank, Perry, Florida, the following bonds, the same to be held as security for any funds deposited by the Treasurer of Florida in the said First National Bank, Perry, Florida, to-wit:

Description of Securities	Trust Receipt No.	Int. Payable	Date of Issue	Amount
Town of Perry 6% Sewer Bonds with July 1, 1930 & SCA. Dated 1-1-1926. One bond due each year from Jan. 1940 to 1949 inclusive. Ten @ $1,000.00 each.....	Jax 1992	J&J		$10,000.00

(Sgd.) W. V. Knott, State Treasurer and as County Treasurer Ex-Officio.

[fol. 25] EXHIBIT "3" TO BILL OF COMPLAINT

Perry, Florida, May 2, 1930.

Received of the Board of Bond Trustees of Taylor County, Florida, the following described notes, mortgages and bonds to be held in trust for them, it being understood by and between this bank and the said Board of Bond Trustees that the securities described are pledged with the said Board of Bond Trustees by the bank for the purpose of securing deposits to the credit of said Board of Bond Trustees in Interest and Sinking Fund accounts. It is understood by and between the parties hereto that this bank is to segregate and hold assets of the bank and same to be released to the bank only by and with the consent of said Board of Bond Trustees, their successors, or assigns, so long as said funds remain on deposit.

Note # 24046 signed by A. V. Weaver and indorsed by T. L. Weaver, dated January 1, 1930, interest at 8% from date $5,000.00

Note # 23943 signed by E. S. Conner and secured by 15 shares capital stock of First Nat. Bank of Live Oak, Fla. certificate attached, due July 15, 1930 ..... 3,000.00

The following first mortgage notes, mortgages attached:

Maud C. Calhoun	# 24090	due 3/7/31	4,925.37
T. J. Faulkner	23495	5/20/30 Pd. 10/2 $302.40	

[fol. 26]

W. A. Hendry	23964	7/15/30	2,500.00
W. T. Hendry	23904	6/1/30	2,750.00
Clara B. Kelly	23781	2/20/31	1,984.47
R. D. Peacock	22773	12/10/30	7,240.18
Geo. E. Porter	24114	11/2/30	9,450.00
Edgar Smith	24126	4/15/31	2,282.04

19

J. A. Vickrey	23517	9/3/30 Pd. 9/24 $144.00	1,000.00	
J. H. Parker	24030	10/15/30	5,000.00	
				49,299.76
Bond # 80, City of Waycross, Georgia				1,000.00
Bonds of Perry Masonic Lodge Nos. 41, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 90, 97, 98, 147, 150, 170, 178, 179, 148, 180, 186, 187, 188, 190, 193, 211, 212, 213				4,250.00
Perry Hotel Company Bonds Nos. 75, 80, 86, 88, 92, 93, 108, 122, 125, 130, 131, 133, 134, 135, 136, 137, 138, 139, 147, 132, 148, 149, 150, 152, 186, 187, 188, 189, 204, 213, 214, 151, 162, 227, 246, 251, 255				15,000.00
				69,549.76

The First National Bank of Perry, Fla., by W. L. Weaver, Vice-President.

[fol. 27]

We hereby assign, transfer, and set over to W. V. Knott, State Treasurer, and as County Treasurer Ex-Officio for Taylor County, Florida, the notes, mortgages and bonds described above.

Board of Bond Trustees for Taylor County, Florida, A. C. Kerby, J. H. Parker, G. H. Warren.

Exhibit "3½" to Bill of Complaint

Items of collateral held by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, under pledge by First National Bank of Perry.

Asset	Name or Description	Original Amount	Balance of Principal	
621	Perry, Fla. 6% Sewer Bonds.....	$10,000.00	$10,000.00	Pledged March 15, 1930.
630	Sarasota Co. 5½% Hy. Bonds.....	10,000.00	10,000.00	Pledged March 12, 1930.
[fol. 28]				
623	Perry Hotel Co. 7% Bonds.....	15,000.00	15,000.00	Pledged with Bond Trustees of Taylor Co. and assigned to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor Co., May 2, 1930.
624	Perry Lodge #123 F. & A. M. 7% Bonds.....	4,250,000	4,250,000	Pledged with Bond Trustees of Taylor Co. and assigned to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor Co., May 2, 1930.

[fol. 29] EXHIBIT "4" TO BILL OF COMPLAINT

No. 7865

Treasury Department, Office of Comptroller of the Currency

Washington, D. C., October 25, 1930.

Whereas, from information on file in this bureau, I am satisfied the "The First National Bank of Perry," located in the Town of Perry, County of Taylor, and State of Florida is insolvent and unable to pay its just and legal debts:

Now, Therefore, I, J. W. Pole, Comptroller of the Currency, in pursuance of the power and authority vested in me by law and under the provisions of Section 1 of an Act of Congress entitled "An Act authorizing the appointment of Receivers of National Banks, and for other purposes," approved June 30, 1876, do hereby appoint Iron Ross, Receiver of "The First National Bank of Perry" with all the powers, duties, and responsibilities given to or imposed upon a Receiver under the provisions of the Revised Statutes of the United States which authorize the appointment of a Receiver.

In Witness Whereof, I have hereto subscribed my name, and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, this twenty-fifth day of October, A. D. 1930.

J. W. Pole, Comptroller of the Currency. (Seal.)

Received Dec. 11, 1935.

[fol. 30] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS

[Title omitted]

Comes now Taylor County, Florida, a political subdivision of the State of Florida, and files its several motion to dismiss the bill of complaint in this cause filed, and for grounds of said motion says:

1. Said Bill states no grounds for equitable relief.

2. The bill of complaint shows no jurisdiction in this Court over this cause.

3. The bill of complaint shows on its face that the pledge agreement were valid and binding.

4. The bill of complaint fails to show fraud upon creditors of said Bank, but sets up mere conclusion of the pleader.

5. The Bill of Complaint fails to show sufficient facts to warrant setting aside said agreements.

6. The Bill of Complaint fails to set up facts which show that said pledges were void when made, but merely draws conclusions.

7. The Bill of Complaint fails to show that plaintiff is the proper party to institute this suit.

8. The Bill of Complaint fails to show facts sufficient to establish an illegal preference.

9. The Bill of Complaint shows that said pledges became valid and binding even if they were originally ultra vires.

[fol. 31] 10. The Bill of Complaint fails to show that W. L. Weaver, in his official capacity in said Bank, had no authority to enter into the pledges on behalf of the Bank.

11. The Bill of Complaint affirmatively shows that the said Bank and its officials and the plaintiff in this case recognized and acted under said pledges after being authorized by law to do so.

12. All allegations of said Bill of Complaint with reference to lack of authority in said Bank to make pledges set forth constitute mere conclusions of pleader.

13. The allegations of the Bill of Complaint show that all the pledges were ratified and confirmed by the parties hereto in due course prior to and after the insolvency of said Bank.

14. It is affirmatively shown that if there was fraud in connection with said pledges it was solely upon the side of said Bank and not upon the part of any defendant.

It is respectfully prayed that said Bill of Complaint be dismissed as to this defendant upon the grounds set forth.

T. J. Swanson, Attorney for Taylor County, Florida.

Received Jan. 30, 1936.

[fol. 32] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS

[Title omitted]

Come now W. V. Knott, as Treasurer of the State of Florida; W. V. Knott, Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, Florida; Dave Sholtz, as Governor of the State of Florida; J. M. Lee, as Comptroller of the State of Florida; and W. V. Knott, Treasurer of the State of Florida, Dave Sholtz, Governor of the State of Florida, and J. M. Lee, Comptroller of the State of Florida, as members of and constituting the Board of Administration of the State of Florida, and file this their joint and several Motion to Dismiss the Bill of Complaint heretofore filed herein against them and each of them, and for grounds of the said motion say:

1. That the said Bill of Complaint is without equity.

2. That the said Bill of Complaint states no sufficient facts to warrant the relief therein prayed against these defendants or either of them.

3. That it affirmatively appears from the allegations of said Bill of Complaint, that the alleged pledge agreements therein sought to be set aside and declared null and void, are valid, subsisting, and binding agreements, and that there is no sufficient reason in law for the interposition of the jurisdiction of a Court of Equity to set the same aside.

4. That the said Bill of Complaint sets forth no sufficient facts to show that said agreements should be set aside, but merely states the conclusions of the pleader in that regard.

[fol. 33] 5. That said Bill of Complaint shows on its face that this Court is without jurisdiction in the premises.

6. That said Bill of Complaint sets forth no sufficient allegations to show that plaintiff is a proper party to bring said suit.

7. That said Bill of Complaint contains no sufficient allegations to show that W. L. Weaver, as Executive Vice-President of the First National Bank of Perry, was without

authority on behalf of said bank, to make and enter into the pledges in said Bill of Complaint sought to be set aside.

8. That said Bill of Complaint affirmatively shows from the allegations thereof, that said pledges were in terms sufficiently broad to cover any funds deposited by the Treasurer of the State of Florida in said First National Bank of Perry, and affirmatively shows that the bonds therein referred to were delivered in pursuance of said pledges, and in recognition thereof.

9. That the allegations of said Bill of Complaint set forth no sufficient facts to show any lack of authority in said First National Bank of Perry to make the pledges in said Bill of Complaint set forth, but the allegations in that regard constitute conclusions of the pleader.

10. That the allegations of the Bill of Complaint affirmatively show that said pledges as made were acted upon by the parties thereto and by the plaintiff in this suit.

11. That it appears from the allegations of said Bill of Complaint that if said pledges were ultra vires when made, they were subsequently and prior to the insolvency of said bank, ratified and confirmed by the parties thereto; and further, since the insolvency of said bank, ratified and confirmed by this plaintiff.

[fol. 34] 12. That it affirmatively appears from the allegations of the Bill of Complaint that said pledges, if originally ultra vires, became and were valid and binding on and after the 25th day of June, 1930.

13. That the Bill of Complaint sets forth no sufficient facts to show that said pledges constitute any illegal preference, but the allegations with respect thereto consist of conclusions of the pleader, and present no issuable allegations of fact.

14. That said Bill of Complaint contains no sufficient issuable allegations of fact to show that said pledges were void when made, or that they were or are contrary to the public policy of the United States.

15. That the allegations of said Bill of Complaint set forth no facts to show any fraud upon the creditors of said

national bank, but constitute mere conclusions of the pleader.

16. That the Bill of Complaint sets forth no issuable allegations of fact requiring the answer of these defendants or of either of them.

Wherefore, it is respectfully submitted that said Bill of Complaint should be dismissed as to these defendants, and each of them, moving therefor.

Cary D. Landis (W), Attorney General; H. E. Carter (W), Assistant Attorney General; James B. Watson, Assistant Attorney General, Attorneys for the Defendants in said Motion Mentioned.

Received Jan. 3, 1936.

[fol. 35] IN UNITED STATES DISTRICT COURT

ADDITIONAL GROUNDS OF MOTION TO DISMISS; AND SUPPLEMENTAL MOTIONS TO DISMISS PARTS OF BILL—Filed February 20, 1936

[Title omitted]

Come now W. V. Knott, as Treasurer of the State of Florida; W. V. Knott, Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, Florida; Dave Sholtz, as Governor of the State of Florida; J. M. Lee, as Comptroller of the State of Florida; Taylor County, a political subdivision of the State of Florida; and W. V. Knott, Treasurer of Florida, Dave Sholtz, Governor of Florida, and J. M. Lee, Comptroller of the State of Florida, as members of and constituting the Board of Administration of the State of Florida, defendants herein, before hearing on the Motion to Dismiss the Bill of Complaint heretofore filed herein, and by leave of Court first had and obtained, jointly and severally file these their Additional Grounds of said Motion to Dismiss and their Supplemental Motions to Dismiss the Bill of Complaint, insofar as particular parts thereof, as hereinafter stated, are concerned.

And for additional grounds of said Motion to Dismiss, heretofore filed herein, the said defendants jointly and severally say:

A

(17) That the said Bill of Complaint is multifarious, and seeks relief to which the plaintiff is not entitled.

(18) That it affirmatively appears that the Act of Congress of June 25, 1930, (Chapter 604, 46 Stat. at L. 809, U. S. C. Title 12, Sec. 90) which amends Section 45 of the [fol. 36] National Bank Act of 1864 (Act of June 3, 1864, Chapter 106, Sec. 8, 13 Stat. at L. 101, R. S. Sec. 5136, U. S. C. Title 12, Sec. 24, Seventh) is curative in its effect, and, it affirmatively appearing from facts of which the Court will take judicial notice, that the laws of Florida authorized and required such pledges, the said Act of Congress operates to validate said pledges and pledge agreements, and to make lawful and legal in every respect, the transactions had thereunder, from the respective dates of the making thereof.

(19) That it affirmatively appears that said Act of June 25, 1930, considered in the light of facts of which the Court will take judicial notice, is curative in its effect, and operates to validate said pledges and pledge agreements, and the transactions had thereunder, from and after June 25, 1930, as to any and all deposits of public funds of the State of Florida, or any of its political subdivisions, remaining on deposit with said bank on and after said June 25, 1930.

(20) That it affirmatively appears that, under and by said pledge agreements, it was contemplated that there would be continuous dealings between the parties thereto so long as, and to the extent that, moneys should be deposited with said bank and should remain on deposit; and that throughout such period of time, the parties intended and supposed that a lien should exist and be operative upon the pledged assets of said bank; and that upon the passage by Congress of the Act of June 25, 1930, amending Section 45 of the National Bank Act, any and all obstacles to the legality and operation of any lien upon said pledged assets, were removed; and that thereafter, the original pledge agreements, and the assignments thereof, could, as to the future, be given the effect intended by the parties; and the liens of said pledge agreements intended and contemplated by the parties, became operative as to moneys there- [fol. 37] after left on deposit with said bank.

B

And said defendants further jointly and severally move the Court to dismiss the Bill of Complaint heretofore filed herein, insofar as the said Bill of Complaint seeks to restrain these defendants, or either of them, from the sale of securities under the provisions of Chapter 14,653, Laws of Florida. And for grounds of said motion, said defendants say:

(1) There is no equity in the Bill of Complaint entitling the plaintiff to such relief.

(2) It affirmatively appears that said securities so held by the defendants, or either of them, are held under and by virtue of a valid and subsisting lien.

C

And said defendants jointly and severally move the Court to dismiss the Bill of Complaint heretofore filed herein, insofar as said Bill prays injunctive relief against delivery by the defendants, or either of them, of any of the pledged securities in said Bill of Complaint described, to Taylor County, Florida; and for grounds of said motion, said defendants say:

(1) There is no equity in the Bill of Complaint, entitling the plaintiff to such relief.

(2) Such relief is improper and should not be granted upon the showing made by plaintiff.

(3) It affirmatively appears that said defendants are holding said securities under a valid claim of right, and a [fol. 38] valid and existing pledge, and that they may assert the same to the extent allowed by law.

D

And said defendants jointly and severally move the Court to dismiss the Bill of Complaint herein, insofar as said Bill seeks to enjoin these defendants, or either or any of them, from asserting any right to the possession of the pledged collateral in said Bill of Complaint described. And for grounds of said motion said defendants say:

(1) That there is no equity in the Bill of Complaint, entitling the plaintiff to such relief.

(2) That such relief, so prayed, is improper.

(3) That it affirmatively appears that said defendants are holding the pledged collateral under a valid claim of right, for the purposes for which the same was pledged.

E

And said defendants further jointly and severally move the Court to dismiss the Bill of Complaint herein, insofar as said Bill of Complaint seeks to enjoin said defendants, or any or either of them, from paying out any moneys to the holders of bonds of Taylor County, Florida; and for grounds of said motion, said defendants say:

(1) That there is no equity in said Bill of Complaint, entitling the plaintiff to the relief so prayed.

(2) That it affirmatively appears from the Bill of Complaint that, insofar as such relief is sought, the rights of [fol. 39] holders of bonds of Taylor County, Florida, are involved; and it further affirmatively appears that before such relief may be granted, said holders of bonds, thereby sought to be affected, are necessary parties; and it further affirmatively appears that said holders of bonds thus sought to be affected in their rights, are not parties to this proceeding.

F

And the said defendants further jointly and severally move the Court to dismiss the Bill of Complaint herein, insofar as said Bill seeks to require the surrender to the plaintiff of the pledged securities therein described, in the possession of the defendant Knott, State Treasurer, as County Treasurer Ex-Officio of Taylor County. And for grounds of said motion, said defendants say:

(1) That it affirmatively appears from the allegations of the Bill of Complaint, that plaintiff is not, in equity, entitled to such relief.

(2) That it affirmatively appears from the allegations of the Bill of Complaint that said defendant Knott, in said capacity, has, in equity, a right to hold said securities so coming into his possession.

G

And said defendants further jointly and severally move the Court to dismiss the said Bill of Complaint, insofar as

said Bill seeks to have the action of the plaintiff, in paying to said Knott a part of the pledged collateral, in said Bill described, declared illegal. And said defendants, as grounds for said motion, say:

(1) There is no equity in said Bill of Complaint, entitling the plaintiff to such relief.

[fol. 40] (2) That it affirmatively appears from the allegations of the Bill of Complaint, and other facts of which the Court will take judicial notice, that the plaintiff, upon appointment as Receiver of said bank, was charged with notice of the matters and things appearing in the files of said bank, with respect to such pledge agreements; that the payment by the said plaintiff to said Knott, of the sums of money in said Bill of Complaint referred to, and the delivery by said plaintiff to said Knott, of the collateral therein described, were made and done respectively under a claim of right subsisting in, and then being asserted by, said Knott; and that such payment was made, and such delivery was accomplished by said plaintiff, with full notice of all of the matters and things concerning or pertaining to said pledge agreements.

H

And said defendants further jointly and severally move the Court to dismiss said Bill of Complaint, insofar as it seeks to have the action of the defendant Knott, State Treasurer, as County Treasurer Ex-Officio of Taylor County, Florida, in collecting interest on pledged collateral, and applying the same in part payment of his claim, declared illegal. And for grounds of said motion, these defendants say:

(1) That there is no equity in the Bill of Complaint, entitling the plaintiff to the relief so prayed.

(2) That it affirmatively appears from the allegations of the Bill of Complaint, that any and all collections of interest by said defendant, on pledged collateral, were made under claim of right, and under and by virtue of valid and existing pledges; and it further affirmatively appears that said interest, when so collected, was properly applied by said defendants toward the payment of his said claim.

[fol. 41] I

And said defendants further jointly and severally move the Court to dismiss the said Bill of Complaint, insofar as said Bill seeks to have the alleged actions of these defendants, or any or either of them, in selling one or more of said bonds, declared illegal. And for grounds of said motion, these defendants say:

(1) That there is no equity in said Bill of Complaint, entitling the plaintiff to the relief so prayed.

(2) That it affirmatively appears from the allegations of said Bill of Complaint, that the sale by said defendants, or any or either of them, of any bonds pledged under said pledge agreements, was made pursuant to the terms of said pledge, and that such action on their part was legal and authorized under the law.

J

And said defendants further jointly and severally move the Court to dismiss the Bill of Complaint herein, insofar as said Bill of Complaint seeks to have these defendants, or either of them, pay to the plaintiff the sum of $23,826.81, or any other sum, that may hereafter be received by said Board of Administration, for and on behalf of the holders of bonds of Taylor County, Florida. And for grounds of said motion, these defendants say:

(1) That there is no equity in said Bill, entitling the plaintiff to such relief.

(2) That it affirmatively appears from the allegations of said Bill of Complaint, that the holders of bonds of Taylor County, Florida, are necessary parties to any proceeding [fol. 42] whereby, and wherein, such relief is sought; and it further affirmatively appears that said holders of bonds of Taylor County, Florida, are not parties to this proceeding.

(3) That the said Bill of Complaint, in this respect, is vague, indefinite, and uncertain, and makes no clear showing of any right to such relief.

K

And said defendants further jointly and severally move the Court to dismiss the said Bill of Complaint, insofar as

the same prays that the plaintiff be subrogated to the rights of any holders of bonds of Taylor County, Florida, to any future payments to said holders, by the Board of Administration. And for grounds of said motion, said defendants say:

(1) That it affirmatively appears from the allegations of said Bill, that there is no equity therein, entitling the plaintiff to such relief.

(2) That it affirmatively appears from the allegations of said Bill of Complaint, that said bondholders of Taylor County, Florida, are not made parties thereto; and it appears that such bondholders are necessary parties to any proceeding wherein, or whereby, their rights to future payments at the hands of the Board of Administration, are sought to be affected.

L

And said defendants further move the Court to dismiss said Bill of Complaint, insofar as the same prays that the plaintiff have and recover final judgment and decree in the sum of $23,826.30, or any other sum, against Taylor [fol. 43] County, Florida. And for grounds of said motion, these defendants say:

(1) That there is no equity in the Bill of Complaint, entitling the plaintiff to such relief.

(2) That such relief is inconsistent with relief, elsewhere in said Bill of Complaint, prayed.

M

And said defendants further jointly and severally move the Court to dismiss the Bill of Complaint herein, insofar as said Bill prays that the plaintiff may be authorized to offset against any further dividends payable in the administration of the assets of said First National Bank of Perry, to the defendant Knott, in any of his aforesaid capacities. And for grounds of said motion, these defendants say:

(1) That it affirmatively appears that there is no equity in the Bill of Complaint, entitling the plaintiff to such relief.

(2) That such relief is improper.

N

And these defendants further jointly and severally move the Court to dismiss the Bill of Complaint herein, insofar as said Bill prays that the plaintiff may be allowed interest upon any sums of money which he may recover herein. And for grounds of said motion, these defendants say:

(1) That it affirmatively appears from the allegations of said Bill of Complaint, that there is no equity therein, entitling the plaintiff to such relief.

[fol. 44] (2) That it affirmatively appears from the allegations of said Bill of Complaint, that the Bill is, in that regard, vague, indefinite, and uncertain, and that it is impossible, from a reading of that portion of the same, to determine the relief which is prayed.

(3) That it affirmatively appears from the allegations of said Bill of Complaint, that the plaintiff is not entitled to recover any sums in and by this action.

Wherefore, these defendants, so moving, by their undersigned attorneys, respectfully move the Court to dismiss the Bill of Complaint, as a whole, upon the grounds hereinabove set forth, and as to the particular parts thereof, upon the grounds hereinabove likewise set forth.

Cary D. Landis (W), Attorney General; H. E. Carter (W), Attorney General; James B. Watson, Assistant Attorney General, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION

This cause is before the Court on motion of the defendants, Knott, as Treasurer of the State of Florida, as Ex-Officio Treasurer of Taylor County, Florida, Dave Sholtz as Governor and J. M. Lee as Comptroller; and upon mo-

tion of Taylor County, Florida, a political subdivision of the State of Florida, to dismiss the Bill of Complaint filed herein.

It appears from the Bill of Complaint that in the latter part of the year 1929 and in the early part of the year 1930, [fol. 45] the First National Bank of Perry pledged with the Bond Trustees of Taylor County, Florida, certain securities which aggregated the face value of some $69,500.00, and that thereafter the said Bond Trustees assigned the agreement and pledged securities to the defendant, Knott, who was at the time State Treasurer, and as such Ex-Officio Treasurer of Taylor County, Florida. It further appears that the Bank, through its officers, pledged bonds on March 12, 1930, in the sum of $10,000.00 to secure funds deposited by the said Knott, State Treasurer, as County Treasurer Ex-Officio; and that, on March 15, 1930, the Bank pledged $10,000.00 of Town of Perry bonds with Knott in said capacity to secure funds deposited with said Bank.

In the latter part of October, 1930, the Bank failed; and the plaintiff, Ross, was appointed Receiver and as such Receiver paid to the defendant, Knott, State Treasurer as County Treasurer Ex-Officio, some $20,000.00 derived by him in the collection of securities which had been pledged with the Bond Trustees and left with the Bank. Sometime afterwards the said defendant, Knott, derived some $3,000.00 from the balance of pledged collateral which was in his hands.

It is contended that these pledge agreements were ultra vires and void when made, because prior to June 25, 1930, National Banks had no power to pledge their assets to secure deposits of public funds of states, or their political subdivisions; because, at the time of the execution of said agreements, they were illegal and contrary to the public policy of the United States; and because they operate to prefer the defendants over common depositors.

As to the securities paid over and delivered by the Receiver himself, it is contended that such payment and delivery was made under misapprehension as to the applicable law; and that they should be recovered because such pay- [fol. 46] ment was illegal, preferential, and a fraud upon creditors.

The motions to dismiss set up a number of grounds which squarely present the question of the validity of the pledges

as to unpaid balances remaining on deposit after June 25, 1930, upon the determination of which question the Bill must stand or fall.

On the 25th day of June, 1930, the Act of Congress amending the provisions of the National Banking Act became effective; and this amendment permitted National Banks to give security for the safe-keeping and prompt payment of such money as is here involved of the same kind as is authorized by the law of the State in which the Bank is located. Prior to the passage of this Act, National Banks were without authority to pledge their assets as security for the safe-keeping and prompt payment of public moneys of States, and their political subdivisions, deposited with them.

At the time of the deposit on the part of the Treasurer and of the execution of the agreements by which the Bank pledged the security, the Florida Law permitted banks to pledge their assets as security for the safe-keeping and prompt payment of such deposits of public funds. At such time the National Bank was without authority; but after the Amendment of June 25, 1930, National Banks were authorized to make such pledges as security for such deposits, and, when the Amendment became effective, there was in the hands of the Bank a balance due to the defendant, Knott, as State Treasurer and Ex-Officio County Treasurer, which balance was secured by collateral placed in his hands prior to the amendment of the National Banking Act. The First National Bank of Perry continued to do business until the latter part of October, 1930, several months subsequent to the Amendment of June 25, 1930. During this period, the Bank made no effort to withdraw its pledged security; but, in order to retain the unpaid bal- [fol. 47] ance of the deposit made prior to the Amendment, permitted its security to remain pledged to secure such balance due, at a time when the State law required, and the National Banking Act permitted, such security to be given.

While the facts are not the same, the case of Lewis, Receiver v. Fidelity & Deposit Company of Maryland, 292 U. S. 559, 54 S. Ct. 848, 78 L. Ed. 1425, 92 A. L. R. 794, decided June 4, 1934, presented a question which is quite similar to that in the case at bar. In that case a National Bank had qualified as a public depositary under the laws of the State of Georgia, which required bond in double

the amount of the deposits. The Fidelity Company was surety on the bond involved, which was executed in 1928. The Georgia law then provided that, upon the giving of such bond there should arise and be created a general lien upon all of the assets of the bank, both those presently held and those thereafter to be acquired. Deposits were made; and at the time of the passage of the Amendment of June 25, 1930 there was a balance on hand due the depositor, which balance was withdrawn soon thereafter. Later, between June 25, 1930, and the appointment of the Receiver in 1932, deposits were regularly made and aggregated a large sum. The unpaid balance on hand at the time of the appointment of the Receiver the Fidelity Company paid, taking an assignment of the rights of the depositor against the Bank. No bond, other than the original 1928 bond, was ever given. The Supreme Court of the United States held that when the bond was originally given it was ineffective to create a lien; but that when the legal obstacle to the lien was removed by the Amendment of June 25, 1930, the original agreement could as to the future be given the effect intended by the parties, and the lien became operative as to the deposits thereafter made. Consequently, the Fidelity Company was held entitled to assert the lien as against the general assets of the bank in the hands of the Receiver.

[fol. 48] In the case at bar, the Florida Laws permitted the pledging of securities by banks and a continuing agreement was entered into by the Treasurer with the First National Bank of Perry, which agreement was that the Treasurer would deposit money, and would recognize that bank as a public depository. These securities were pledged for the safekeeping and prompt payment by the Bank of these deposits. Thus far, the only distinction between the Lewis case and the instant case is that there a general lien was provided upon the giving of bond, while in the case at bar a specific lien was contemplated upon the securities pledged with the State Treasurer. After the adoption of the Amendment of June 25, 1930, it is true that no deposits were made by the State Treasurer in the instant case, but there was a balance on deposit which remained due and unpaid until the Bank closed its doors in the latter part of October, 1930. It is true, according to the allegations of the Bill, that the State Treasurer made no further deposits and that he did not call on the Bank to

repledge its securities, but that he contented himself with the security pledged prior to the Amendment; but it is likewise true that the legislatively established public policy of the State of Florida required security to be taken for such deposits, and after June 25, 1930 National Banks were authorized to give it. Moreover, on June 25, 1930, and thereafter such security was held under the pledge agreements set up in the Bill.

Deposits in a Bank create but one liability, that of debtor and creditor; and to say that the pledging of the security before the Amendment was null and void and inoperative to protect a balance in the hands of the Bank after the obstacle, which prevented an effective original pledge, was removed and the original agreement could be given the effect intended, would in the instant *case he to allow* the Bank to continue to hold unpaid balances, having theretofore [fol. 49] delivered security, at a time when the State law in effect required, and the Federal law authorized, security to be given. To say that the original agreement of the parties may be given the effect intended as to deposits made after June 25, 1930, but not as to unpaid balances remaining on deposit after that date is to sacrifice equitable principles upon *the altar of tenuous distinctions.* In each situation the relation of the Bank and the depositor is the same, that of debtor and creditor. It is hardly to be presumed that, in order to make the unpaid balance a deposit for which the security would be liable, it would be necessary for the Treasurer to have appeared at the bank window, give his check for the unpaid balance; and the next moment, deposit it. In the Lewis case, the Supreme Court said:

"* * * It appears that the balance on hand June 25, 1930 was withdrawn soon thereafter; that between June 25, 1930, and the appointment of the receiver, May 23, 1932, deposits were regularly made aggregating a large sum; that from time to time checks were drawn against these deposits; and that all of the balance in bank when the receiver was appointed represented deposits made after the passage of the Act. The appointment of the bank as depository in 1928 and the bond were to cover a period of four years. Though the lien was in form security for the bond, the extent of liability was to be measured by the unpaid balance. Thus, the transaction was not com-

pleted in 1928; it was contemplated that there would be continuous dealings between the parties for four years. In fact, the relation continued until the appointment of the receiver. Throughout the whole period the parties intended that the lien should be operative and supposed that it was. The appointment was within the power of the State to confer and of the bank to accept, but by reason of the paramount federal law one of the anticipated incidents of the relation, the lien, could not arise. When that obstacle [fol. 50] was removed by the Act of June 25, 1930, the original agreement could as to the future be given the effect intended by the parties; and the lien became operative as to deposits thereafter made and is entitled to priority from the date of the Act. A statute is not retroactive merely because it draws upon antecedent facts for its operation • • • "

For reasons above stated, these motions to dismiss will be granted and the Bill of Complaint dismissed.

Done and Ordered in Chambers, at Pensacola, Florida, this 29 day of February, A. D. 1936.

A. V. Long, United States District Judge.

Received Mar. 1, 1936.

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

Equity. No. 21

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws, Plaintiff,

vs.

W. V. KNOTT, as Treasurer of the State of Florida et al., Defendants

FINAL DECREE

This cause coming on to be heard upon the motion of the defendants, W. V. Knott, as Treasurer of the State of Florida, as Ex-Officio Treasurer of Taylor County, Florida, Dave Sholtz as Governor, and J. M. Lee as Comp-

troller; and upon motion of Taylor County, Florida, a po-
[fol. 51] litical subdivision of the State of Florida, to dismiss the bill of complaint filed herein,—and the same having been argued by counsel for the respective parties;

It Is Considered by the Court that the said motions and each of them be and the same are granted, and the said bill of complaint dismissed, for the reasons stated in the opinion filed herein.

Done and Ordered in Pensacola, Florida, this the 29th day of February, A. D. 1936.

A. V. Long, District Judge.

Received Mar. 2, 1936.

In United States District Court

[Title omitted]

Petition for Appeal—Filed April 23, 1936

Comes now Plaintiff, by his undersigned attorney, and feeling himself aggrieved by the Final Decree of this Court entered herein on the 29th day of February, 1936, dismissing the Complainant's Bill of Complaint, hereby prays that an appeal may be allowed to plaintiff from said final decree to the United States Circuit Court of Appeals, in and for the Fifth Circuit, made returnable on the 21st day of May, 1936.

The plaintiff would further show that said appeal is taken by direction of the Treasury Department, Comptroller of the Currency, as will appear from the direction of George P. Barse, General Counsel, Comptroller of the Currency, approved, Gibbs Lyons, Deputy Comptroller, dated April 4, 1936, hereto annexed, marked Exhibit "A" and made part hereof.

[fol. 52] The plaintiff presents herewith his assignment of errors, copy of which has heretofore been served upon the attorneys for the defendants.

As this appeal is being taken by direction of a Department of the Government of the United States, the plaintiff further prays that no bond be required of plaintiff to prosecute said appeal or answer in damages or costs, or otherwise, as a condition to the order allowing said appeal.

Dated the 23d day of April, 1936.

J. Turner Butler, Attorney for Plaintiff-Appellant.

Service of a copy of the foregoing notice is hereby admitted this 23d day of April, 1936.

Cary D. Landis, Attorney General of the State of Florida, as Attorney for certain of Defendants, by James B. Watson, Assistant Attorney General of the State of Florida.

Service of a copy of the foregoing notice is hereby admitted this 23d day of April, 1936.

T. J. Swanson, of Counsel for Taylor County, a Political Subdivision of the State of Florida, One of Defendants in Said Cause.

[fol. 53] EXHIBIT "A" TO PETITION FOR APPEAL

Treasury Department, Comptroller of the Currency, Washington

Address reply to "Comptroller of the Currency".

April 4, 1936.

Mr. Iron Ross, Receiver, The First National Bank of Perry, Florida.

Reply to CC-LD

DEAR SIR:

Reference is made to your letter of March 11, 1936 concerning the litigation in the United States District Court, Northern District of Florida, in the case of Iron Ross, Receiver of the First National Bank of Perry, Fla. v. W. V. Knott, as Treasurer of the State of Florida, et al. You have submitted a copy of the order entered by the Federal Court on February 29th dismissing the bill of complaint filed on your behalf. You have also submitted the opinion of the Court, as well as a copy of a letter received from your attorney recommending that an appeal be taken from the decision in question.

For the reasons stated by your attorney in his letter of March 3, 1936, we are of the opinion that the decision is erroneous. Accordingly, by direction of the Comptroller of

the Currency, you are instructed to perfect an appeal from the decision handed down by the United States District Court on February 29, 1936 to the United States Circuit Court of Appeals.

In view of this direction, no appeal bond need be filed by you under the provisions contained in the Judicial Code, Title 28 U. S. C. A. Section 870 and the decisions of the Fed-
{fol. 54} eral Courts in the cases of Pacific National Bank v. Mixter, 114 U. S. 463, 29 L. Ed. 221 and Robinson v. Southern National Bank, 94 Fed. 22.

Very truly yours, George P. Barse, General Counsel,
Comptroller of the Currency.

Approved: Gibbs Lyons, Deputy Comptroller.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

The application of the Attorney for the Plaintiff for appeal, together with the Assignments of Error accompanying same having been presented to this Court, it is

Ordered, Adjudged and Decreed That an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the Final Decree filed and entered February 29, 1936, dismissing the Complainant's Bill of Complaint be and the same hereby is allowed.

It further appearing that said appeal is being taken by direction of a Department of the Government of the United States, it is

Ordered, Adjudged and Decreed That no appeal bond shall be required of the plaintiff.

Done and Ordered by me in my Chambers this 23d day of April, A. D. 1936.

A. V. Long, Judge.

Received Apr. 27, 1936.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR RESTRAINING ORDER—Filed April 23, 1936

To the Honorable A. V. Long, Judge of said Court:

1. Your petitioner, plaintiff herein, respectfully represents that an application has been filed herein by the plaintiff for an order granting an appeal from the Order of this Court, under date of February 29, 1936, dismissing the Complainant's Bill of Complaint.

2. Your petitioner would further show that it is alleged in Paragraph 8 of said Bill of Complaint that W. V. Knott, as State Treasurer of the State of Florida, J. M. Lee, as State Comptroller of the State of Florida, and Dave Sholtz, as Governor of the State of Florida, are now threatening to proceed under the provisions of Chapter 14653, Laws of Florida, Acts of 1931, to sell the collateral now in the hands of W. V. Knott, as Ex-Officio County Treasurer of Taylor County, under said illegal pledges, and apply the proceeds in payment of the claim of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and if said officers are permitted to proceed with the sale and sell said securities, the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, will have obtained a further and additional illegal preference of the said Bank to the irreparable damage of the plaintiff and general creditors of the Bank.

3. Your petitioner would further show that it is alleged in Paragraph 11 of said Sworn Bill of Complaint that the plaintiff is entitled to an injunction jointly and severally to enjoin the said defendants, W. V. Knott, as Treasurer of the State of Florida, Dave Sholtz, as Governor of the State of Florida, and J. M. Lee, as Comptroller of the State of Florida, and/or as Members of the Board of Administration of the State of Florida, from selling said pledged securities [fol. 56] now in the possession of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and that plaintiff is likewise entitled to an injunction to enjoin and restrain W. V. Knott, State Treasurer, as Ex-Officio

County Treasurer, and/or the Board of Administration of the State of Florida from asserting any claim to the pledged collateral now in the possession of the plaintiff.

4. Your petitioner re-avers each and every of the allegations of said sworn Bill of Complaint which are incorporated herein by reference, and your petitioner further avers that it is the duty of this Court to maintain the present status quo and preserve the rights of the parties pending said appeal.

5. Wherefore, the premises above considered and for the purpose of preserving the present status pending the appeal, your petitioner prays that until said appeal has been decided and finally disposed of, that the defendants, W. V. Knott, as Treasurer of the State of Florida, Dave Sholtz, as Governor of the State of Florida, and J. M. Lee, as Comptroller of the State of Florida, and/or as Members of the Board of Administration of the State of Florida, are hereby enjoined from selling or disposing of said pledged securities described in the Bill of Complaint as now in the possession of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and that pending said appeal that W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, and the Board of Administration of the State of Florida be enjoined from asserting any right to the possession of the pledged collateral described in the Bill as now in the possession of plaintiff. And your petitioner will ever pray.

J. Turner Butler, Attorney for Petitioner, Plaintiff.

[fol. 57] Service of the foregoing Petition is hereby acknowl-dged this 23d day of April, 1936.

Cary D. Landis, Attorney General of the State of Florida, as Attorney for Certain of the Defendants, by James B. Watson, Assistant Attorney General of the State of Florida.

Service of the foregoing Petition is hereby acknowledged this 23rd day of April, 1936.

T. J. Swanson, Attorney for Taylor County, a Political Subdivision of the State of Florida, one of Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER

This cause having come on to be heard upon application of the plaintiff herein for a restraining order, and it appearing that the plaintiff has filed his Bill of Complaint against the defendants to recover certain securities that are now held by the defendant, W. V. Knott, State Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, under pledge for the purpose of securing funds heretofore deposited in the First National Bank of Perry, and that the plaintiff has sought in his said Bill of Complaint other relief, and it appearing that the said defendants filed motions to dismiss the Bill of Complaint and that said motions to dismiss said Bill of Complaint have been sus- [fol. 58] tained, and that an appeal is being taken by the plaintiff to the United States Circuit Court of Appeals in and for the Fifth Circuit from the Order and Decree of this Court dismissing said Bill of Complaint, and it further appearing that an application has been made to restrain certain of the defendants from selling the securities pending apeal in order that the present status may be preserved pending appeal;

It Is Therefore, Ordered, Adjudged and Decreed, That the defendants, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, W. V. Knott, as Treasurer of the State of Florida, J. M. Lee, as Comptroller of the State of Florida, and Dave Sholtz, as Governor of Florida, and/or as Members of the Board of Administration of the State of Florida, be and they hereby are jointly and severally enjoined pending said appeal from selling all or any part of the securities now held by W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, for the purpose of securing pledges or attempted pledges made by the First National Bank of Perry, as described and set forth in the Bill of Complaint.

Done and Ordered, by me at my Chambers this 23 day of April, 1936.

A. V. Long, Judge.

Service of the foregoing Order is hereby acknowledged this — day of April, 1936.

——, Attorney General of the State of Florida, as Attorney for Defendants. —— ——, Attorney for Taylor County, a Political Subdivision of the State of Florida, one of Defendants.

Received Apr. 27, 1936.

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed April 23, 1936

Comes now the plaintiff in the above entitled cause by his Attorney, J. Turner Butler, and assigns error upon the ruling and decision of the District Court of the United States for the Northern District of Florida in the above entitled cause, as follows:

(a) That the Court erred in finding the equities in said cause for defendants and against plaintiff.

(b) That the Court erred in its order under date of February 29, 1936, dismissing the Bill of Complaint because:

1. The Court in effect held that the Amendment to the National Bank Act that became operative June 25, 1930 validated pledges made prior to June 25, 1930 as to unpaid balances remaining on deposit after June 25, 1930.

2. That the Court held that the Bank "in order to retain the unpaid balances of the deposit made prior to the Amendment permitted its security to remain pledged to secure such balances due, at a time when the State laws required and the National Bank Act permitted such security to be given."

3. The Court in effect held that the pledge agreements could be given effect as to deposits made prior to June 25, 1930.

4. That the Court in effect held that the Bank had power to pledge assets prior to June 25, 1930.

[fol. 60] 5. That the Court in effect held legal pledges that were made prior to June 25, 1930.

6. That the Court in effect refused to hold that the failure of the State to withdraw the balance of deposits subsequent to June 25, 1930 constituted an election on the part of the State to treat the balance on deposit from and after June 25, 1930 as an unsecured balance.

7. The Court in effect refused to hold that the duty devolved upon the State Treasurer after the Amendment to the National Bank Act became operative on June 25, 1930 to secure a repledge of the pledged assets and that his failure to do so constituted an election on the part of the State Treasurer to treat the balance on deposit from and after June 25, 1930 as an unsecured deposit.

8. The Court in effect held that on June 25, 1930 and thereafter such security was held under the pledge agreement set up in the Bill.

9. That the Court in effect refused to hold that after the Amendment to the National Bank Act became operative on June 25, 1930 that the duty devolved upon the State to withdraw the balances of deposit that were deposited prior to June 25, 1930, unless it was the purpose of the State to treat the balances on deposit made prior to June 25, 1930 as unsecured.

10. The Court in effect refused to hold that if it was the purpose of the State Treasurer to contend that deposits made prior to June 25, 1930 were secured by the pledges, that the duty devolved upon the State Treasurer after the Amendment to the National Bank Act became operative on June 25, 1930 to secure a repledge of the pledged assets.

[fol. 61] 11. The Court in effect refused to hold that when the Amendment to the National Bank Act became operative on June 25, 1930 that the State Treasurer should either have withdrawn from the Bank the balances on deposit or should have secured a repledge of the pledged assets.

12. That the Court in effect refused to hold that it was the duty of the Receiver to set aside the transactions involved which illegally reduced the assets available for general creditors even if the Bank itself was not in a position to do so.

13. That the Court in effect held that the Statute of June 25, 1930 amending the National Bank Act should be con-

strued as relating to transactions that occurred prior to its adoption.

14. That the Court in effect gave the Amendment to the National Bank Act of June 25, 1930 a retroactive or retrospective operation by holding that the same validated pledges made prior to its enactment.

15. That the Court by its order in effect has prevented a ratable distribution of the assets of said Bank among the general creditors.

16. That the Court has held in effect by said order that the officers of said Bank were authorized to execute said pledge agreements.

17. That the Court has in effect held that the said agreements and pledges in pursuance thereof did not create an unlawful preference in favor of the defendant, W. V. Knott, State Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, as against other general creditors of the said First National Bank.

[fol. 62] 18. That the Court has in effect held that the Act of Congress of the United States, approved June 25, 1930, and the Statutes of the State of Florida, operated to validate pledges which were unlawful at the time the pledges were made.

19. That the Court by its order has refused to hold that it was illegal and ultra vires for the First National Bank of Perry to guarantee deposits of a general creditor or a depositor of said Bank prior to June 25, 1930.

20. That the Court by its order has in effect refused to hold that when the funds were deposited in the First National Bank of Perry that said funds became intermingled with other funds of the said First National Bank of Perry and became the property of the said Bank and the depositor became a general creditor of the said Bank without security.

21. That the order of said Court, if sustained, will prevent a ratable distribution of the assets of said Bank.

22. That the order of said Court operates in effect to prefer one general creditor over other general creditors.

(c) That the effect of said Order dismissing the Bill is to refuse to hold that the action of the plaintiff in delivering to

W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the pledged collateral; the action of the plaintiff in paying over to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, the sum of $20,759.37, being the proceeds derived by plaintiff from the collection of pledged collateral; the action of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, in collecting interest from the pledged collateral in [fol. 63] the sum of $2,025.00 and applying the same in part payment of his claim against said Bank; and the action of W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, or the action of W. V. Knott, State Treasurer, J. M. Lee, State Comptroller and Dave Sholtz, as Governor of the State of Florida, in selling one of the bonds held as collateral in the sum of $1,042.50 and applying the moneys so derived in part payment of the claim against the Bank, were all severally illegal, ultra vires and void for all or any of the following several reasons:

1. That the said actions operated to prefer the said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, a general creditor over other general creditors.

2. That said actions prevent a ratable distribution of assets among creditors as required by law.

3. That said action was based upon a misapprehension or mistake of the applicable law.

4. That said payments were preferential payments that were made under a mistake of the applicable law.

5. That said delivery of said securities by plaintiff to defendant, W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, resulted from a mistake by plaintiff, an officer of the United States, of the applicable law.

6. That the payment by plaintiff to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, of $20,759.31 derived from the collections from [fol. 64] pledged collateral resulted from a mistake by plaintiff, an officer of the United States, of the applicable law.

7. That the action of the plaintiff in paying to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of

Taylor County, the proceeds from pledged collateral and the delivery to him of pledged collateral was based upon a misapprehension or mistake of the plaintiff, an officer of the United States, as to the legality of the pledges described.

8. That all of said sums paid to W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, should have been distributed ratably among the general creditors.

9. That the securities delivered to said W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Taylor County, should have been sold and the proceeds distributed ratably among the creditors of said Bank.

10. That the said actions of the Receiver and said officials of the State of Florida and the County of Taylor sought to be set aside would, if sustained, have the force and effect of validating or ratifying illegal contracts made prior to the closing of the Bank.

11. That neither the Receiver nor the officials of the State of Florida, or the County of Taylor, have any power to bind stockholders and creditors by recognizing any illegal contract made prior to the closing of the Bank.

J. Turner Butler, Attorney for Plaintiff-Appellant.

[fol. 65] Received copy of the foregoing Assignment of Errors and service thereof accepted this 23d day of April, 1936.

Cary D. Landis, Attorney General of the State of Florida, as Attorney for Certain of the Defendants, by James B. Watson, Assistant Attorney General of the State of Florida. T. J. Swanson, of Counsel for the Defendant, Taylor County, a Political Subdivision of the State of Florida.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT

To the Clerk of the United States District Court for the Northern District of Florida:

You will please prepare a transcript of the record in the above entitled cause for the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to an appeal allowed in said cause, and include in said transcript the following pleadings, instruments and proceedings, to-wit:

1. Copy the Bill of Complaint filed herein on the 11th day of December, 1935.
2. Copy the Motion to Dismiss the Bill of Complaint filed by the defendant, Taylor County, a political subdivision of [fol. 66] the State of Florida, on January 30, 1936.
3. Copy the Joint and Several Motion to Dismiss the Bill of Complaint of W. V. Knott, as Treasurer of the State of Florida, et al., filed January 3, 1936.
4. Copy additional grounds of Motion to Dismiss and Supplemental Motions to Dismiss parts of Bill of Complaint, filed February 20, 1936.
5. Copy Opinion of the Court dated February 29, 1936 and filed March 1, 1936.
6. Copy Order dated February 29, 1936 and filed March 2, 1936, dismissing the Bill of Complaint.
7. Copy Petition for Appeal and Order allowing same.
8. Copy Petition for restraining order pending appeal and order thereon.
9. Copy Assignment of Errors.
10. Copy this Præcipe.
11. Copy Citation and service thereof.
12. Omit all other papers and proceedings.

J. Turner Butler, Attorney for Plaintiff, Appellant.

[fol. 67] Received a copy of the foregoing Præcipe and service thereof accepted this 23d day of April, 1936.

Cary D. Landis, Attorney General of the State of Florida, as Attorney for Certain of the Defendants, by James B. Watson, Assistant Attorney General of the State of Florida.

Received a copy of the foregoing Præcipe and service thereof accepted this 23d day of April, 1936.

T. J. Swanson, Attorney for Taylor County, a Political Subdivision of the State of Florida, One of the Defendants.

It Is Stipulated And Agreed by and between the parties hereto by their undersigned attorneys and solicitors that the Transcript on the appeal entered in the above entitled cause shall be made up of the foregoing papers.

J. Turner Butler, Attorney for Plaintiff. Cary D. Landis, Attorney General, as Attorney for Certain of the Defendants. T. J. Swanson, Attorney for Taylor County, a Political Subdivision of the State of Florida, One of Defendants.

Received Apr. 27, 1936.

[fol. 68] Clerk's certificate to foregoing transcript omitted in printing.

RECITAL AS TO CITATION

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * *

[fol. 69] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 4th, 1937

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws,

versus

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as Members of and Constituting the Board of Administration of the State of Florida

On this day this cause was called, and, after argument by J. Turner Butler, Esq., for appellant, and James B. Watson, Esq., and T. J. Swanson, Esq., for appellees, was submitted to the Court.

[fol. 70] OPINION OF THE COURT—Filed January 22, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws, Appellant,

versus

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as members of and Constituting the Board of Administration of the State of Florida, Appellees

Appeal from the District Court of the United States for the Northern District of Florida

(January 22, 1937)

Before Foster, Sibley and Hutcheson, Circuit Judges

HUTCHESON, Circuit Judge:

The suit, by the receiver of a failed national bank, was to cancel a contract it had made pledging securities for public

deposits, to-wit, bond funds of Taylor County, Florida, to recover the pledged securities, and to get back moneys paid [fol. 71] the depositor in the course of liquidation as proceeds from some of the securities. The petition alleged that the agreement for the pledge was made and the securities were pledged before the passage of the Enabling Act of June 25, 1930,[1] Section 90, Title 12, U. S. C. A. and that the deposits had remained in the bank without change in either the agreement, the securities, or the deposits after its passage until in October, when the bank failed, and the receiver was appointed. It was alleged too that under a misconception as to the law the pledge agreement had been treated by the receiver as valid and collections from the pledged securities had been paid over to the county until the bringing of this suit. It was not alleged that the bank was insolvent or in a failing condition on June 25th, or, indeed, until some time in October, when it failed.

The District Judge thought the Enabling Act effective to validate the arrangement from and after its passage. He thought the matter stood in law just as it would have stood if there had been a new agreement, or new deposits had been made after the passage of the act. He did not think it material that no change was made in the agreement, the securities, or the deposits. He decided the case against the receiver on the demurrer. This appeal followed. Those on the county's side contended below, they contend here, as a minor argument, that the acts of the receiver in accepting the pledge agreement as valid, and in proceeding on that assumption for several years, gave the agreement a new strength and validity, if it had none before. Their real contention, however, is that the District Judge was right in giving validating effect to the act as to the continuance of the deposits after its passage, and on this they take firm [fol. 72] stand. We think the position well taken, and that the judgment should be affirmed on that ground. Counsel for appellant and appellees extensively present and discuss

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[1] "Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

the many decisions on the power of national banks to give pledges in security for deposits. Each insists that their effect is to support the view he advances. We do not think it necessary to enter into any extended discussion or analysis of these cases, for none of them is exactly in point, and only one, Lewis v. Fidelity and Deposit Co., 292 U. S. 559, is at all controlling. As to this case, each finds in it something of comfort to himself. Appellant insists that its affirmance of the judgment, upholding the security, was made to turn on the fact that, though the agreement for security antedated the June, 1930, act, all of the deposits then existing were afterwards drawn down and new deposits made. Appellees insist that, while these facts were commented upon in the opinion, it was only because they were the facts of that case, that the court expressly reserved opinion upon the validating effect of the act under other circumstances. They insist that continuing deposits as the deposits in this case were, by being allowed to remain in the bank after June 25th, are to be considered as made after that date just as much as if they had been drawn down and redeposited. They insist, in short, that the decision in the Lewis case, that an agreement for security was valid as to deposits made after, on an agreement for security made before, June 25th, is authority for the position they take here, that deposits secured by pledge agreement made before that date, are, if allowed to remain in the bank after it, validly secured by the agreement, the condition of their being placed there and the continuing condition of their being allowed to remain. In Florida it has long been the law that state banks may give security for public deposits. First American Bank and Trust Co. v. Town of Palm Beach, 96 Fla. 247. For years before the 1930 Enabling Amendment was passed it had been the practice of national banks in Florida in competition with state banks to give security [fol. 73] for public deposits. When the contract for security was made in this case it was made, in good faith, and without time limit, as a continuing contract, both parties to it believing that it was a reasonable one and that the bank was within its corporate powers in making it. If the contract had not been made, the county would not have deposited its funds in the bank. If it had not been understood to be a continuing contract, the funds on deposit would not have been allowed to remain there. Invalid then though the

security was in law for want of granted power before the passage of the Enabling Act, it became, we think, valid in law, after it was passed, as to all deposits covered by it without distinction between deposits newly made and those remaining there from an earlier depositing. The statute certainly does not in terms, we think it does not in effect, distinguish between agreements or deposits made before and those made after its enactment. The statute is an act of enablement. Settling a troublesome question about and curing a former deficiency in power, it enabled national banks to compete with state banks for the deposit of public moneys by authorizing them to secure such deposits where, by state law, state banks could secure them.

When the purpose of the statute is considered in the light of the long-continued practice of national banks, known to and recognized by the Comptroller, of giving security for public deposits, and the desire of Congress to authorize [fol. 74] this practice,[2] it would, we think, be an unreasonable construction of the act to hold that Congress intended by it to provide that, in order to be valid, all existing arrangements for security must be cancelled out and new ones entered upon. We think the contrary intent manifest. We know from the history of the act that its purpose, we think its effect, was to fully enable national banks to compete with state banks. We think that from and after its passage, as

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[2] The proceedings in Senate and House when the act was passed show this clearly.

"In Senate Report No. 67, 71st Cong. 2nd Sess., the committee based its favorable report upon a letter from the Attorney General of Minnesota, reading in part as follows: 'The United States district court for this district has held that it may not thus pledge its assets to secure private deposits and the trend of authority generally seems to be to the effect that a bank may not in any case pledge its assets to secure a deposit unless authorized by law so to do.

The National banks of this State have pledged with the State and the various sub-divisions thereof millions of dollars in Government and other bonds as security for public deposits. They are anxious to be permitted to do so, and we are willing that they should. Under the law as it now stands we may be taking a chance in accepting such pledges from the national banks, and we should like to have the chance

to all public funds on deposit in national banks in states where state banks could give security, whether deposited before or after the passage of the act, arrangements made before its passage for their security, equally with those made afterward, are valid.

Judgment affirmed.

[fol. 75] JUDGMENT

Extract from the Minutes of January 22, 1937

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws,

versus

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as Members of and Constituting the Board of Administration of the State of Florida

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Florida, and was argued by counsel;

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removed by legislation in Congress which will specifically authorize such pledges by national banks' ".

* * * * * * *

"From House Report No. 1657, 71st Cong. 2nd Sess., it appears that the committee reported favorably upon the bill (S. 486) because of a request from the acting Secretary of the Treasury reading in part as follows: 'While the office of the Comptroller of the currency has consistently taken the position that national banks have the right to give security for the safekeeping and prompt payment of public moneys of the State or political subdivision thereof deposited with such national banking associations, several recent decisions have thrown some doubt on this question with the result that in some States the State banks may secure the public deposits but the officers of the State are in doubt about depositing with the national banks in the absence of any specific law by Congress on the subject. It would be extremely helpful, therefore, if it is possible for your committee to report out, and the House pass, S. 486'."

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Iron Ross, as Receiver of the First National Bank of Perry, a corporation under the National Banking Laws, be condemned to pay the costs of this cause in this Court.

[fol. 80] ORDER DENYING REHEARING

Extract from the Minutes of February 5th, 1937

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws,

versus

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as Members of and Constituting the Board of Administration of the State of Florida

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 81] MOTION AND ORDER STAYING MANDATE — Filed February 24, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws, Appellant,

vs.

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as Members of and Constituting the Board of Administration of the State of Florida, Appellees

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Your petitioner, Iron Ross, Appellant in the above entitled cause, by his Attorney, J. Turner Butler, brings this his petition and respectfully represents unto your Honor:

1. That on the 23d day of April, 1936 your petitioner did enter in the District Court of the United States, in and for

the Northern District of Florida, his appeal to the United States Circuit Court of Appeals, in and for the Fifth Circuit, from the Order and Decree of the United States District Court, in and for the Northern District of Florida, dismissing the Bill of Complaint filed in the United States District Court, in and for the Northern District of Florida, by your petitioner, Iron Ross, as Receiver of the First National Bank of Perry, a corporation under the National Banking Laws, against W. V. Knott, as Treasurer of Florida, W. V. Knott, Treasurer of the State of Florida, as [fol. 82] Ex-Officio Treasurer of Taylor County, Dave Sholtz, Governor of the State of Florida, J. M. Lee, as Comptroller of the State of Florida, Taylor County, a political subdivision of the State of Florida, and W. V. Knott, Treasurer of Florida, Dave Sholtz, Governor of Florida, and J. M. Lee, Comptroller of Florida, as members of and constituting the Board of Administration of the State of Florida, the said appeal having been made returnable to this Court on the 21st day of May, 1936, as will appear from the record in said cause filed in this Court on May 12, 1936, reference thereto being herein and hereby prayed.

2. Your petitioner would further show that the Lower Court issued a Restraining Order enjoining the sale of the securities involved in said litigation pending said appeal, as will appear from page 57 of the record, reference thereto being herein and hereby prayed.

3. Your petitioner would further show that by Opinion dated the 22nd day of January, 1937, this Court did affirm the decision of the Lower Court, as will appear from the records of this Court, reference thereto being herein and hereby prayed.

4. Your petitioner would further show that your petitioner filed in this Court its petition for rehearing and that said petition for rehearing was overruled on the 5th day of February, 1937, as will appear from the records of this Court.

5. Your petitioner would further show that your petitioner is now preparing a petition to be filed in the Supreme Court of the United States for review on certiorari of the said judgment rendered herein by this Court.

[fol. 83] Wherefore, the premises above considered, your petitioner prays that the mandate of this Court in said

cause be stayed or withheld until the petition now in process of preparation by petitioner for certiorari be disposed of by the United States Supreme Court, upon the condition, however, that the appellant's petitioner's petition for writ of certiorari shall be docketed in the office of the Clerk of the United States Supreme Court within three months from the date of the Order of this Court sustaining the Order of the United States District Court, in and for the Northern Ditsrict of Florida, in said cause and that or if your petitioner has prayed for improper relief, that this Court will make such Order as will preserve the existing status until such time as will give petitioner reasonable opportunity to present his case to the Supreme Court of the United States and secure a determination thereof by said Supreme Court of the United States.

J. Turner Butler, Attorney for Petitioner-Appellant Herein.

[fol. 84] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws, Appellant,

versus

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as Members of and Constituting the Board of Administration of the State of Florida, Appellees.

On Consideration of the Application of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court

the certificate of the clerk of the Supreme Court that the certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 24th day of February, 1937.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 85] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered form 69 to 84 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8112, wherein Iron Ross, as Receiver of the First National Bank of Perry, a corporation under the National Banking Laws is appellant, and W. V. Knott, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as Members of and Constituting the Board of Administration of the State of Florida, are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 68 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louis-

iana, in the Fifth Circuit, this 24th day of February, A. D. 1937.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 86] MOTION AND ORDER STAYING MANDATE THIRTY DAYS FROM MARCH 24th, 1937—Filed March 22, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS IN AND FOR THE FIFTH CIRCUIT

Case No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a Corporation under the National Banking Laws, Appellant,

versus

W. V. KNOTT, as Treasurer of the State of Florida, W. V. Knott, Treasurer of the State of Florida, as Ex-Officio Treasurer of Taylor County, Florida, et al., Appellees

To the Judges of the Circuit Court of Appeals of the United States in and for the Fifth Circuit:

Your petitioner, Iron Ross, Appellant herein, brings this his petition and respectfully represents unto your Honor as follows:

1. Your petitioner would show that on the 24th day of February, 1937, this Court made an Order providing for a Stay of Mandate herein, provided that within thirty days from the date of the Order there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court of the United States that a petition for certiorari and record has been filed in that Court and that due proof of service of notice thereof, under Paragraph 3 of Rule 38 of the Supreme Court of the United States has been given.

[fol. 87] 2. Your petitioner would further show that immediately after your petitioner's petition for rehearing herein filed was denied by this Court that your petitioner did apply to the Comptroller of the Currency of the United States for

authority to petition the Supreme Court of the United States for a writ of certiorari to review the judgment of this Court in this cause; that upon receipt of your petitioner's application to be permitted to apply for a writ of certiorari herein by the Comptroller of the Currency, the matter was referred to the General Counsel of the Comptroller of the Currency and that upon advice of the General Counsel of the Comptroller of the Currency your petitioner was empowered by the Comptroller of the Currency to petition for the writ of certiorari to review the judgment of this Court.

3. Your petitioner would further show that immediately upon receipt of the authority to take the appeal that your petitioner instructed his attorney to begin the preparation of the petition for certiorari and the supporting brief and that the said petition and supporting brief have been prepared by your petitioner's attorney and the same have been transmitted to the Comptroller of the Currency in Washington, D. C. for approval by the Counsel of the Comptroller; that when the said petition and supporting brief have been approved the same are to be returned to your petitioner to be printed and filed in the Supreme Court of the United States in accordance with the Rules of the Supreme Court.

4. Your petitioner would further show that so much time has been consumed in the transmission of the request to the Comptroller of the Currency at Washington for authority to petition for the writ of certiorari and so much time has been consumed in the return of said authority, and so much time has been consumed by the Department in [fol. 88] investigating the questions involved that it has been impossible for your petitioner to get on file in the Supreme Court of the United States the petition for writ of certiorari and supporting brief and to have the same served as required by the previous Order of this Court.

5. Your petitioner would further show that this application is not made for delay but your petitioner is advised by his counsel and your petitioner believes that your petitioner has meritorious reasons to believe he has the right to apply for writ of certiorari to be issued in said cause and that your petitioner has been proceeding as expeditiously as it has been possible for your petitioner so to do; that the

delay to which your petitioner has been subjected has been unavoidable, due to the necessity for reference of the matter to departmental heads for authority to take an appeal, due to the time required by the agents of the Treasury Department to investigate the matter and due to loss of time necessarily involved in the transmission of the request and Orders thereon through the mails.

Wherefore, your petitioner prays that the Order heretofore granted by this Court for a Stay of Mandate be extended for thirty days from and after March 24, 1937, provided that within said thirty days from the date of March 24, 1937, there shall be filed with the Clerk of this Court the certificate of the Supreme Court of the United States that the certiorari petition and record have been filed in the Supreme Court of the United States and that due proof of service of the notice thereof, under Paragraph 3 of Rule 38 of the Supreme Court has been given. And your petitioner will ever pray.

J. Turner Butler, Attorney for Petitioner. Iron Ross, Petitioner.

[fol. 89] STATE OF FLORIDA,
County of Duval:

Personally appeared before me, a Notary in and for the State of Florida at large, one Iron Ross who being by me first duly sworn, deposes and says that the foregoing petition subscribed by him is true.

Iron Ross.

Sworn to and Subscribed before me this 18th day of March, 1937. Agnes Zetrouer, Notary Public, State of Florida at Large. My Commission expires: February 19, 1941. (Seal.)

[fol. 90] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8112

IRON ROSS, as Receiver of the First National Bank of Perry, a corporation under the National Banking Laws, Appellant,

versus

W. V. KNOTT, as Treasurer of the State of Florida, and as Ex-Officio County Treasurer of Taylor County, Florida, et al., and as members of and constituting the Board of Administration of the State of Florida, Appellee

On Consideration of the Application of the Appellant in the above numbered and entitled cause for a further stay of the mandate of this court therein, to enable Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is Ordered that the issue of the mandate of this court in said cause be and the same is further stayed for a period of thirty days; from March 24th, 1937; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from March 24th, 1937, there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from March 24th, 1937, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 22nd day of March, 1937.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 91] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,451. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 32. Iron Ross, as Receiver of the First National Bank of Perry, etc., petitioner, vs. W. V. Knott, as Treasurer of the State of Florida, W. V. Knott, Treasurer of the State of Florida, as Ex-Officio County Treasurer of Taylor County, Florida, et al. Petition for a writ of certiorari and exhibit thereto. Filed April 21, 1937. Term No. 32, O. T., 1937.